Much learning has been devoted to attempts to define the scope and limitations of the *ejusdem generis* doctrine. As McCardie J. justly remarked in *Magnhild (S.S.) v. McIntyre Bros.* 1920, 3 K.B. at page 326, "The risk seems to be that the rule may develop into a juristic fetish". Fortunately I do not find it necessary to refer to the various authorities, as it has clearly been established that before the doctrine can be applied, there must be a common genus in the particular words (see *per* Vaughan Williams L.J. in *Tillmanns v. S. S. Knutsford* 1908, 2 K.B. page 385 at page 395). In the definition of 'house' as defined in the Enactment I look in vain for any genus or category. 'House' as defined in the Enactment includes a 'dwelling house' *i.e.* a place where people live and sleep, 'warehouse, office and counting house' *i.e.* places where people are employed, 'shop' *i.e.* a place where some people are employed and may or may not live, and 'schools' where some people are employed and others attend for instruction. Even if a common category could be found, the *ejusdem generis* rule could only be applied if the particular words were followed by a general expression such as 'any other building', but where, as in the definition of house, the general words are 'any other building in which persons are employed', these words are not restricted by the particular words preceding, but provide a fresh category, which applies to and the general words should be interpreted in their usual and ordinary meaning, unrestricted by any legal theory, and so interpreted, clearly cover a picture theatre.

I find, therefore, that the Odeon Theatre is a 'house' as defined in the Sanitary Boards Enactment, that the advertisement hoardings complained of are signboards affixed to a house within the definition given in By-law 1, and that accordingly these particular signboards are exempted under By-law 7 from the necessity of being licensed under By-law 2.

In my opinion, therefore, the decision of the learned Magistrate was correct, and the appeal will be dismissed.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

HAJI MOHAMED IDRIS v. GRENIER.

[SELANGOR CIVIL SUIT No. 151 of 1937]

Land Code (Cap. 138) S. 55—unregistrable transfer—construction—implied covenant.

Plaintiff and his wife (since deceased) were the registered proprietors of 2 pieces of land in Kuala Lumpur and each of them was entitled to one undivided half-share. Subsequently by an indenture made between the plaintiff, his wife and the defendant (hereinafter referred to as "the trustee") the plaintiff and his wife purported to transfer the land to the trustee upon certain trusts for the benefit of the transferors as therein mentioned, one of such trusts being that from the death of either of them, the plaintiff and his wife, the trustee shall stand possessed of the lands upon trust to convey the whole thereof to the survivor absolutely. The transfer was not in the form required by the Land Code and was never registered. Before her death the plaintiff's wife and the plaintiff executed a charge of the said lands in favour of one L.Y.C. The plaintiff's wife died, having made a will by which she appointed the plaintiff and the defendant to be executors and bequeathed the residue of the estate to the plaintiff absolutely. Probate was granted to the defendant, the plaintiff having renounced. A year after his wife's death the plaintiff asserted his claim to the half share of his wife in the said lands and did so on several occasions subsequently. In 1937 the plaintiff commenced this action praying for a declaration that he was the owner of the two pieces of lands. The material defence put forward by the defendant was that the gift to the trustee was never completed and was incapable of being enforced.

Held, on the construction of the document of transfer, that a contract by the deceased and by the plaintiff to give effect to the common intention after her or his death could be implied and that such contract was binding on the conscience of the parties and could be given effect to without infringing the principles of the Land Code.

CIVIL SUIT.

W. G. W. Hastings (*M. N. Cumarasami* with him) for the plaintiff.

Tan Teow Bok, for the defendant.

Cur. Adv. Vult.

Terrell, Ag. C.J.—In or about the month of April 1926 the plaintiff and his wife Haji Saida (since deceased) became the registered proprietors of two pieces of land in the town of Kuala Lumpur comprised in Certificates of Title Nos. 2114 and 2115, and now held under Selangor Grant Nos. 9419 and 9420, that is to say, each of the registered proprietors was entitled to one undivided half-share.

On the 27th of July 1926 by an Indenture made between the plaintiff of the first part, Haji Saida of the second part, and the defendant (thereafter called the trustee) of the third part, the plaintiff and the said Haji Saida purported to transfer the said two pieces of land to the trustee upon certain trusts for the benefit of the transferors as therein mentioned. One of such trusts was that from and after the death of either of them, the plaintiff and the said Haji Saida, the trustee should stand possessed of the said lands upon trust to convey the whole thereof to the survivor absolutely. This transfer was not in the form required by the Land Code, and was never registered. In fact

it was incapable of being registered, nor was it implemented by a transfer in the required form. The trustee, however, held the certificates of title until 1934 when the plaintiff and the deceased executed a charge in favour of one Lin Yoke Ching (f) since when the certificates have been in her possession.

In 1935 Haji Saida died, having made a will dated the 29th of February 1924 whereby she appointed the plaintiff and the defendant her executors and bequeathed the residue of her estate to the plaintiff absolutely, and on the 12th April 1935 probate of the said will was granted to the defendant, the plaintiff having renounced.

Shortly afterwards the defendant applied in O.S. 167/35, to which the plaintiff was respondent, for leave to sell by public auction all or any of the property forming the estate of Haji Saida deceased, and on the 25th of November 1935 an order was made by the Supreme Court giving leave to sell such property at the prices therein mentioned. Amongst such property was the half-share of the deceased in Selangor Grants 9419 and 9420. The plaintiff apparently took no objection to the order that was made, and did not assert any claim under the Indenture of Settlement, but there was in fact no need for him to do so as he was in any case a residuary legatee under his wife's will.

Early in 1936, however, (Probate Suit 1/36) certain beneficiaries attacked the will as not being in accordance with the provisions of Mohammedan Law. The plaintiff and the defendant were defendants in this Suit, and thereupon the plaintiff immediately asserted his claim to the two pieces of land by writing to the defendant on the 23rd of January 1936 directing him not to put up those particular lands for sale.

On the 19th of August 1936 an order was made by consent in the Probate suit, and it was declared *inter alia* that the bequests of the immoveable property of the testatrix were null and void. The appointment of the defendant as executor was not interfered with, but it was ordered that he should hold the residue of the estate upon trust as to half the residue in favour of the plaintiff and as to the remaining half in trust for certain other beneficiaries. In the order the lands in question in this suit were not specifically referred to.

On the 22nd of June 1936 the plaintiff asserted his claim to the half share of Saida in the two pieces of land, and did so on several occasions subsequently. The defendant was, however, advised that he could not transfer such half share to the plaintiff except under the authority of an order of Court, and on the 20th of December 1937 the plaintiff commenced this action asking for a declaration that he was the owner of the two pieces of land upon the death of Haji Saida and for an order that they be transferred to him.

The defendant was sued as the executor of the will of Haji Saida deceased, and not as trustee under the Indenture of settlement, but the fact that the defendant appears in these transactions in a dual capacity seems to have caused some confusion, and the defence includes various submissions which would only be relevant if the defendent were being sued as trustee.

The substantial defences are:—

1. that the gift to Mr. Grenier as trustee was never completed and is now incapable of being enforced,

and

2. that the plaintiff is precluded by the consent order of the 19th August 1936 from claiming the whole interest of the deceased in the two pieces of land.

As this case turns almost entirely upon the construction and the effect, if any, of the Indenture of the 27th of July 1926, it will be convenient at this stage to set it out in full.

"This INDENTURE is made the 27th day of July, 1926, between Mohamed Idris bin Abdul Rauf of No. 11B, Damansara Terrace, Kuala Lumpur of the one part and Haji Saida binti Bakar of No. 11B, Damansara Terrace, Kuala Lumpur, of the second part and Walter John Piachaud Grenier of Messrs. Walter Grenier & Co. Accountants and Auditors, 2 Cross Street, Kuala Lumpur, (hereinafter called the Trustee) of the third part.

WHEREAS the parties of the first and second part are the joint registered proprietors of a piece of land containing two acres in extent described in Certificates of Title No. 2114 and 2115.

AND WHEREAS the parties of the first and second part in consideration of their natural love and affection the one for the other as husband and wife are desirous of ensuring that in the event of the one dying during the lifetime of the other then that the survivor shall become possessed of the share of the piece of land hereinbefore mentioned belonging to the party predeceasing the other.

Now these presents witness as follows:—

1. In order to effectuate their wishes and in consideration of the natural love and affection which the parties of the first and second part bear the one to the other as husband and wife and of other good causes and consideration the parties of the first and second part hereby transfer unto the trustee his heirs executors and assigns all those two pieces of land. To hold the said lands unto the Trustee his heirs, executors and assigns on the following trusts:—

(1) To hold the said lands in trust for the parties of the first and second part in accordance with their interests as registered immediately prior to the registration of this transfer.

(2) From and after the death of either of the parties of the first and second part then the Trustee shall stand possessed of the said land upon trust to transfer and convey the whole of the said land unto the survivor absolutely.

(3) Until the death of either the party of the first part or the party of the second part. To pay the profits if any arising from the said land to the parties of the first and second part in equal shares.

IN witness whereof the parties hereto have hereunto set their hands the day and year first above written".

The deed was executed by all the parties in the presence of a solicitor.

Now it is important to distinguish between the position of the trustee under the Indenture and the position of the plaintiff and Haji Saida *inter se*. So far as the trustee is concerned it is abundantly clear that the Indenture was of no effect as a transfer of the land in question to him, section 55 of the Land Code providing as follows:—

> "Land which is comprised in any....certificate of title....shall not be capable of being transferred, transmitted, charged, or otherwise dealt with except in accordance with the provisions of this Enactment".

It is to be noted that there is no provision such as that which was contained in section 5 of the former Registration of Titles Enactment to the effect that any attempt to transfer etc., "shall be null and void and of no effect". As a result however of section 55 of the Land Code, the Indenture fails to transfer any legal title to the trustee.

It is equally clear that the trustee obtained no equitable title which could be enforced through the Courts. The position is very clearly stated by Viscount Haldane when delivering the judgment of the Privy Council in *Macedo v. Beatrice Stroud,* (1922) 2 A.C. page 330. In that case the deceased had purported in consideration of his love and affection for his daughter to transfer to her land which was registered land under a Trinidad Ordinance without registering the transfer, the Ordinance providing that in such case the transfer was ineffectual to pass any estate or interest. The position, therefore, was exactly the same as the position of the trustee in the present case, and the following passage may be quoted from the judgment at p. 338.

> "It (the transfer), therefore, having regard to the terms of the Ordinance, transferred no estate or interest either at law or in equity. At the most it amounted to an incomplete instrument which was not binding for want of consideration. Had it been in terms a declaration of trust, a Court of equity might have compelled the trustee to carry out the trust, which would have been binding on him, even if voluntary. But it does not purport to be a declaration of trust, or anything else than an inchoate transfer. As such and as it is voluntary, their Lordships think that it is no more than an imperfect gift of which a Court of equity will not compel perfection. The judgments of Lord Eldon in **Ellison v. Elliison,** 6 Ves. 656 and of Turner L.J. in **Milroy v. Lord,** 4 D.F. & J. 264, have placed this principle beyond question".

The Privy Council in this passage has approved the principles laid down by Turner L.J. But in view of counsel's argument in the present case, it is desirable that the principle should be stated in the exact words of Turner L.J. At page 274 he points out that a voluntary settlement may be effected either by a transfer of the property in question either to the beneficiary or to a trustee, or else by the owner declaring himself to be a trustee for the beneficiary. He proceeds:—

> "But in order to render the settlement binding, one or either of these modes must be resorted to, for there is no equity in this Court to perfect an imperfect gift. The cases I think go further to this extent, that if the settlement is intended to be effectuated by one of the modes to which I have referred, the Court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the Court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust".

Now, as I have said, the plaintiff makes no claim against the defendant as trustee of the settlement, nor does he seek a declaration that Haji Saida had declared herself a trustee of one undivided half share of the lands in question, a trust, which, if established, would be binding on her executors; and in his defence therefore the defendant has combatted a proposition which has never been set up.

The plaintiff's claim is not against Mr. Grenier as trustee, but against him as executor of the will of Haji Saida; and the plaintiff alleges that as between himself and Haji Saida there was a binding contract for valuable consideration which a Court of equity will enforce. There is no binding covenant by Haji Saida in the operative part of the Indenture of settlement, and the substantial question before the Court is whether such a covenant can be implied from the recitals.

The cases in which in the interpretation of contract a covenant may be implied form one of the most difficult branches of law, and as each decision must depend on the facts of the particular case, no very useful purpose will be served by referring to them. The principle upon which the Court will act has perhaps been stated most clearly by Kay L.J. in *Hamlyn v. Wood,* (1891) 2 Q.B. page 494:—

> "I agree with the rule as laid down by the Master of the Rolls (Lord Esher) viz. that the Court ought not to imply a term in a contract, unless there arises from the language of the contract itself, and

the circumstances under which it is entered into, such an inference that the parties must have intended the stipulation in question, that the Court is necessarily driven to the conclusion that it must be implied".

In most of the reported cases where such relief is claimed there are stipulations on both sides, and it is argued that unless some further stipulation is implied, the stipulations which are expressed will fail to carry out the intention of the parties, and the contract as a whole will be inoperative. This is not the case here. On looking at the Indenture in question the whole object of the deed is contained in the second recital namely that of ensuring that on the death of either the plaintiff or Haji Saida the survivor shall become possessed of the share of the other of them in the lands in question, and the operative part, the purported transfer to the trustee, is introduced by the statement that the transfer is "in order to effectuate their wishes". The transfer to the trustee is not therefore the chief purpose of the Indenture, but merely machinery for carrying out its chief and in fact only purpose. As the transfer itself is ineffectual I think that the Court is justified in finding that the whole deed will be inoperative unless there is implied a covenant by the parties to carry out the object which they have so clearly expressed.

I find, therefore, that a contract by Haji Saida and by the plaintiff to give effect to the common intention after her or his death must be implied. Such a contract is binding on the conscience of the parties, and can be given effect to without infringing the principles of the Land Code. On Saida's death such a contract became binding on her executor.

I need only refer shortly to the argument that the plaintiff is precluded in some manner by the consent order of the 19th of August 1936 from putting forward his claim. The order as I have pointed out merely provided for the distribution of the residuary estate of Haji Saida. The lands in question in this suit are not mentioned in the order, nor is there any evidence that the ownership of Haji Saida's share was the subject of either litigation or decision. In such a case no question of estoppel can arise.

The plaintiff is accordingly entitled to the declaration prayed. The costs of both parties will be taxed and paid out of the estate of Haji Saida deceased, those of the plaintiff between party and party and those of the defendant between solicitor and client.

Judgment accordingly.

[ORIGINAL CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

August 28, 1939.

ALAGAPPA CHETTIAR

v.

KADER AND OTHERS.

[PERAK CIVIL SUIT No. 27 of 1939]

Landlord and tenant—death of tenant—personal representative and others occupying premises—whether landlord entitled to recover possession without giving notice to quit—nature of weekly or monthly tenancy.

The plaintiff was the landlord of premises let to K., since deceased, on a monthly tenancy. After the death of K., the plaintiff sued the personal representative of the deceased and the other defendants to recover possession of the premises occupied by them. No notice to terminate the tenancy was given. It was contended on behalf of the plaintiff that no notice was necessary.

Held, (1) that a weekly or monthly tenancy is not a succession of leases for a week or a month, but one of indefinite duration which exists until terminated by act of party or operation of law;

(2) that such a tenancy is an interest which is transmitted to personal representatives; and

(3) that the plaintiff was not entitled to recover possession as the tenancy in dispute was still in existence at the date of institution of the suit.

TRIAL OF SUIT.

Das, for the plaintiff.

Teh, for the defendants Nos. 1, 2 and 7.

Cur. Adv. Vult.

Murray-Aynsley, J.—In this case the Plaintiff, the land-lord, seeks to recover possession of premises from various defendants, who are the occupants of the premises, and the personal representative of a deceased tenant.

From evidence given on behalf of the Plaintiff it appears that the premises were let to one K. Abdullah as a monthly tenant. K. Abdullah died on January 29th last. One K. Kader has since taken out Letters of Administration. No notice to quit has been given. It was contended on behalf of the Plaintiff that this was not necessary. This was based on a view of the nature of monthly and weekly tenancies expressed by Sproule J. in the local case of *Khoo Soo Cheow v. Kam Teik Sean,* 1 F.M.S.L.R. 87.